No. 93-1170

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

UNITED STATES OF AMERICA, *et al.*,
Petitioners,

v.

NATIONAL TREASURY EMPLOYEES UNION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF AMICUS CURIAE COMMON CAUSE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE [1]

Common Cause files this brief in support of the United States' Petition for a Writ of Certiorari. Common Cause is a non-profit membership corporation organized under the laws of the District of Columbia. Its principal objective is to further honest and responsible government in the United States. It currently represents the interests of 280,000 members.

Common Cause has a longstanding interest in the federal laws concerning government ethics, and it actively supported the enactment of the Ethics Reform Act of 1989. Representatives of Common Cause testified before

[1] All parties to this case have consented to the filing of this brief. The written consents of the parties are attached as Appendix B.

the commissions appointed to investigate the reform of the ethics laws and before the relevant committees of Congress during their consideration of the 1989 legislation.

REASONS FOR GRANTING THE WRIT

The honoraria provision struck down by the Court of Appeals is an integral part of the web of ethics regulations governing the conduct and pay of federal employees. The ban on the receipt of honoraria for articles, speeches or appearances was the culmination of two decades of Congressional revisions and refinements of the honoraria laws in particular and the ethics law in general. The Court of Appeals decision, if permitted to stand, undermines the ability of Congress to enact significant ethics legislation governing the federal service.

Title VI of the Ethics Reform Act as amended ("the Act") prohibits the receipt of honoraria for any appearance, speech or article by any Member, officer, or employee of the United States government. The Act does not prohibit any federal official from making a speech, appearance or publishing an article.[2] It provides only that a federal employee may not receive payment for such activities, except reimbursement for travel expenses. 5 U.S.C. app. § 505(3) (Supp. IV 1992).

The honoraria provision was not, as has been suggested by the Respondents and echoed in the opinion of the Court of Appeals, a chance and purposeless addition to the laws. Rather, it was part of a careful step-by-step effort of Congress to protect against corruption and to ensure the appearance as well as the reality of impartiality in the federal government.

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[2] Pub. L. No. 101-194, § 601(a), 103 Stat. 1760 (1989), 5 U.S.C. app. § 501(b) (Supp. IV 1992). The honoraria provisions of the 1989 Act did not originally cover the Senate and its employees. Subsequent legislation extended the honoraria ban to all government employees, including Senators and their staff. Pub. L. No. 102-90, 105 Stat. 447, 450 (1991).

Congress has long recognized that employees at all levels of government can harm the public interest if they are subject to improper financial influence. Since the 19th century, conflict-of-interest statutes have prohibited all government employees from acting for the government in business transactions in which they have a financial interest. As this Court recognized,

> The moral principle upon which the statute is based has its foundation in the Biblical admonition that no man may serve two masters, Matt. 6:24, a maxim which is especially pertinent if one of the masters happens to be economic self-interest. Consonant with this salutary moral purpose, Congress has drafted a statute which speaks in very comprehensive terms. Section 434 is not limited in its application to those in the highest echelons of government service . . .[3]

Similarly, all executive branch officers and employees have long been subject to the prohibitions against private compensation for government service and against bribery, graft, and representation of private parties in matters affecting the government.[4]

As part of these general prohibitions regulating the conduct of executive branch employees, federal regulations have long set forth general restrictions on the receipt of honoraria by executive branch employees. Under these regulations, executive branch employees could not receive honoraria for speeches or articles that focus specifically on the employing agency's policies, create a conflict of interest, or interfere with the employee's official

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[3] *United States v. Mississippi Valley Gathering Co.*, 364 U.S. 520, 549 (1961) (construing 18 U.S.C. § 434, a predecessor of 18 U.S.C. § 208 (1988), which applied to any "officer or agent of the United States").

[4] *See* S. Rep. No. 2213, 87th Cong., 2d Sess. (1962), *reprinted in* 1962 U.S.C.C.A.N. 3852, 3856-58 (discussing 18 U.S.C §§ 201, 203, 205, 209 and their predecessor statutes).

duties. These prohibitions, extending back decades, applied to all executive branch employees, regardless of grade or pay.[5]

Thus, when in the wake of the Watergate era scandals Congress began the task of erecting prohibitions against the receipt of honoraria, it began its task against the backdrop of public corruption laws that were applied uniformly throughout the federal executive service. When Congress enacted in 1974 the first statutory limitations on the receipt of honoraria for an article, speech or appearance, it not surprisingly chose to apply the restrictions to every "elected or appointed officer or employee of any branch of the Federal Government." Under this law, the amount of honorarium was limited to $1,000 (excluding reimbursement for actual travel expenses), with an aggregate limit of $15,000 in any calendar year.[6] However, it departed from the prior regulations on one crucial point. Unlike the regulations, which were limited in scope by a subject matter test, the honoraria statutes applied to all speeches, articles or appearances without reference to the relationship between the subject matter and the official's duties.

Two years later, the honoraria limits were raised to $2,000 per speech and $25,000 per year, and civil rather than criminal penalties were proscribed, but the restrictions continued to apply to government employees at all levels in all three branches and to all speeches, articles or appearances regardless of the subject matter or the identity or interests of the audience.[7]

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[5] *See* 33 Fed. Reg. 12,487 (1968); 5 C.F.R. § 735 (1992).

[6] *See* Pub. L. No. 93-443, § 101(f)(1), 88 Stat. 1268 (1974).

[7] These monetary ceilings are no longer in effect. The initial $25,000 limited was eventually lowered by Congress to $2,000 by 1981. *See* Pub. L. No. 97-51, 95 Stat. 958, 966 (1981). The $2,000 limit on honoraria was repealed by legislation imposing a complete ban on honoraria at issue in this case. *See* Pub. L. No. 101-194, § 601(a), 103 Stat. 1760 (1989) (conforming amendments) (executive and judicial branches and House of Representatives); Pub. L. No. 102-90, 105 Stat. 447, 450 (1991) (Senate). Thus, in light of the judgment of the Court of Appeals, currently there are no statutory limits on the amount of honoraria that a member of the executive branch can accept.

The problems caused by the receipt of honoraria for articles, speeches and appearances were described in reports of special ethics panels in the House and Senate in 1977, which recommended the adoption of even tighter restrictions for members of Congress. Both panels recognized that polls and public surveys showed rising public cynicism over the practice of honoraria, and noted the inherent potential for conflicts of interest. The House adopted, as an internal rule applicable to House Members, a $750 limit on honoraria for any single speech, an annual limit on outside earned income, and regulations concerning travel expenses. The Senate adopted similar restrictions.[8]

This patchwork of statutes, regulations, and legislative rules proved insufficient to curtail the abuses created by outside income and to promote public confidence in the integrity of government. In 1989, President Bush recognized the continuing problem in the executive branch and provided a partial remedy, an executive order prohibiting all presidential appointees in the executive branch from receiving any outside earned income (including any honoraria).[9] In the legislative branch, the limits on honoraria also proved inadequate. Honoraria received by members of the House and Senate fueled the public perception that special interests were engaging in

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[8] *Financial Ethics: Communication from the Chairman, House Comm. on Admin. Review*, H.R. Doc. No. 73, 95th Cong., 1st Sess. 9-12 (1977); *Senate Code of Official Conduct: Report of the Special Comm. on Official Conduct*, S. Rep. No. 49, 95th Cong., 1st Sess. 8-9, 37-40 (1977). The Senate rule was never implemented, leaving the Senate covered by statutory limits. The House rule was later revised.

[9] *See* Exec. Order No. 12,674 (1989), 3 C.F.R. at 215 (1990).

influence-peddling. Sizeable honoraria for Congressional staff members also created the appearance of impropriety in the operations of the government. For instance, the press gave widespread coverage to honoraria received by staffers—including $28,000 in honoraria pocketed during a two-day barnstorming trip to Oklahoma and Texas by the top staff aides to House speaker Jim Wright and minority leader Robert Michel.[10]

Newspaper articles and editorials across the country reflected the public view of honoraria as "legalized bribery," "legislative prostitution," "shameless pandering to special-interest payoffs," "bag money," "lobbyist payola," "appalling," a "disgrace" and a "low-life practice."[11] Against this background, Congress began again the task of overhauling the honoraria laws.

To assist in this effort, Congress and the President appointed a series of blue-ribbon panels to study ethics law reform. After taking extensive testimony, each of those panels specifically recommended a complete ban on the receipt of all honoraria by all government personnel. The Quadrennial Commission concluded that the "potential for impropriety in the present rules governing honoraria

[10] *See* Richard Stengel, *Morality Among the Supply-Siders*, Time, May 25, 1987, at 18 (listing ethical lapses by Administration officials, including improper payments from private parties); Charles R. Babcock, *For Two in the House, A Fast $28,000 in Fees*, Washington Post, Oct. 6, 1989, at A20; *see also* John E. Yang, *Honoraria, Bounty of Special Interest Groups, Trickle Down to Some Congressional Staffers*, Wall St. J., May 26, 1989, at A12; Charles R. Babcock, *Interest-Group Honoraria Plentiful for Top Hill Aides*, Washington Post, Oct. 6, 1989, at A1; Carol Matlack, *Gravy Train*, Nat'l J., Jan. 28, 1989; Dan Vukelich, *Honorarium Ban Would Hit Hill Staff, Officers in Wallett*, Washington Times, Feb. 7, 1989; Kimberly Mattingly, *Staff Plays Honoraria Game Too*, Roll Call, Jan. 22, 1989.

[11] *Quoted in Report of 1989 Comm'n on Executive, Legislative, and Judicial Salaries: Hearings before the Senate Comm. on Governmental Affairs*, 101st Cong., 1st Sess. 30, 32 (1989) (statement of Fred Wertheimer, President of Common Cause).

was so high that the practice of receiving honoraria should be eliminated." It "strongly recommend[ed] that the practice of accepting honoraria in all three branches be terminated by statute . . ."[12] Similarly, the President's Commission on Federal Ethics Law Reform urged that Congress should "ban the receipt of honoraria by all officials and employees in all three branches of government."[13] The President's Commission concluded that honoraria restrictions limited by a relational test to the official's duties would be insufficient to resolve the problems because of the risk of circumvention ("[t]o curtail the risk that individuals will find a way to circumvent these restrictions, the bar on honoraria necessarily needs to extend both to activities related to an individual's official duties and to other activities").[14]

Finally, the 14 members of the House Bipartisan Task Force on Ethics asserted that ". . . honoraria [should] be abolished for *all officers and employees of the government* . . ."[15] In language echoing that of the President's Commission, the Bipartisan Task Force warned against "circumvent[ation]" of the rules and advocated that the honoraria ban extend to topics both related and unrelated to the official's duties.

The panels' recommendations reflected a number of important and interrelated judgments. First, the panels affirmed that the receipt of honoraria for articles, speeches

[12] *Fairness For Our Public Servants: The Report of the 1989 Commission on Executive, Legislative and Judicial Salaries* (Dec. 1988) (hereinafter Quadrennial Commission Report).

[13] *To Serve With Honor: Report of the President's Commission on Federal Ethics Law Reform* (hereinafter *Ethics Commission Report*) 35-36 (March 1989).

[14] *Ethics Commission Report* (1989), Recommendation 6, and discussion at 35-37.

[15] *Report of the House Bipartisan Task Force on Ethics on H.R. 3660*, 101st Cong., 1st Sess. 14 (Comm. Print 1989) (emphasis added).

and appearances undermined public confidence in fair government and created an appearance of impropriety, if not actual impropriety itself. Second, the various reports, especially that of the President's Commission, explained that there existed an extreme and unacceptable lack of uniformity across the branches of government with respect to the honoraria laws and that the laws and rules applicable to the Legislative Branch were far too lax.[16] The panels concluded that if the prohibition against the receipt of honoraria was to be successfully applied to the Legislative Branch, as they all believed it had to be, then an equally rigorous ban would also have to be applied consistently to all three branches. This conclusion was based on considerations of fairness and of political practicality. Third, they determined that the potential for abuse—although differing in degree—existed at all levels of government employment, from the highest to the lowest. Fourth, the panels, recognizing the historical antecedents of the honoraria rules, limited the reach of their proposed rules to articles, speeches, and appearances on the belief that the restrictions should be limited to the perceived problem. Finally, the commissions concluded that a broad prophylactic ban applicable both to related and unrelated topics was necessary to curtail the risk that honoraria payers and government employees would circumvent the rules and that agencies would apply subjective rules in an uneven fashion. *See, e.g., Ethics Comission Report* at 34 (describing "eclectic" set of rules among executive agencies).

These recommendations served as the basis for Congress' decision to adopt the honoraria ban.[17] Upon sign-

[16] *Ethics Commission Report* at 35-36.

[17] *See* Statement on Signing the Ethics Reform Act of 1989, 25 Weekly Comp. Pres. Doc. 1855 (Nov. 30, 1989) (the Act "is based on . . . the recommendations of the President's Commission on Federal Ethics Law Reform, and the report of the House Bipartisan Ethics Task Force."); 135 Cong. Rec. H8747-48 (daily ed. Nov. 16, 1989) (remarks of Rep. Lynn Martin, co-chair of House Bipartisan Task Force) ("a good part of [the bill] is based on the recommendations of the President's ethics commission").

ing the 1989 Act, President Bush praised the statute as containing "important reforms that strengthen Federal ethical standards" and described the honoraria ban for federal employees as one of the "[k]ey reforms in the Act."[18]

The Court of Appeals erred in three significant respects. *First*, the Court of Appeals departed from the holdings of this Court as to the power and authority of the government in its role as employer. In regulating the terms and conditions of government employment for employment-related reasons, Congress exercises authority over expressive activities that it cannot wield in other contexts. "[T]he State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968); *see Connick v. Myers*, 461 U.S. 138, 140 (1983); *Snepp v. United States*, 444 U.S. 507, 509 n.3 (1980). The broad authority of Congress to regulate the conduct of federal employees is best illustrated in the cases upholding the constitutionality of the Hatch Act. *United States Civil Service Commission v. National Ass'n of Letter Carriers ("CSC")*, 413 U.S. 548 (1973); *United Public Workers v. Mitchell*, 330 U.S. 75 (1947). In *CSC*, 413 U.S. at 564, the Court recognized that Congress faces a range of policy choices regarding permissible activities by government employees, and that it is within Congress' discretion to choose among competing alternatives. No subsequent decision of this Court has supplanted the balancing test set forth in *Pickering*.

The Court of Appeals failed to apply the *Pickering* balance test to the honoraria provision. The Court did

[18] Statement on Signing the Ethics Reform Act of 1989, *supra* note 17.

recognize that "the government has a strong interest in protecting the integrity and efficiency of public service and in avoiding even the appearance of impropriety created by abuse of the practice of receiving honoraria." Indeed, the Court found it could "safely assume . . . that the interest in avoiding the appearance of impropriety is strong enough to outweigh government employees' interest in engaging in speech for compensation *where the compensation creates such an appearance. . . .*" Appendix to Brief of Solicitor General at 6a (emphasis in original). Nevertheless, the Court struck down the honoraria ban as over-inclusive—because the statute does not require a nexus between the employee's job and the subject matter of character of the payor—despite its view that in many of its applications, the honoraria ban may be constitutional under the *Pickering* balance test. *Id.* at 6a. This departure from the teachings of *Pickering* imperils the federal government's ability to act reasonably as an employer—distinct from its role as the state—and impose reasonable conditions of employment.[19]

Second, the Court of Appeals failed to give adequate deference to the judgments of Congress. The Commissions on which Congress relied, described above, unanimously concluded after careful deliberation that the government's interest in guarding against the appearance of

[19] The Court of Appeals recognized that Section 501(b) only regulates the financial consequences of speeches, articles or appearances, rather than the speech itself. App. to Brief of Solicitor General at 6a. While restrictions on financial incentives may implicate some First Amendment concerns under *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 112 S. Ct. 501 (1991), the character and effect of the restriction is relevant to the *Pickering* balancing test. Here, not only are government employees permitted to speak and write but they are also entitled to reasonable travel expenses, and it is clear, the honoraria ban notwithstanding, that government employees, including the Plaintiffs, have continued to speak and write on matters of public concern. *See, e.g.*, Peter G. Crane, *Let My People Write*, Washington Post (February 8, 1994) at A19.

impropriety as well as actual impropriety warranted a uniform ban. This judgment reflected the shared belief that (1) no artifical grade distinction provided an adequate cleavage between those who wielded discretionary authority and those who did not; (2) regulations implementing nexus tests (as advocated by the Court of Appeals) were subject to subjective and inadequate enforcement and to intentional circumvention by federal employees[20]; and (3) the significant public concern with the fair and evenhanded operation of government warranted a prophylactic rule to guard against future conflict.

In light of these findings, Congress reasonably concluded that a subjective case-by-case review of honoraria payments would not protect the public interest as well as a comprehensive prohibition on honoraria. Prior to implementation of the honoraria ban, the enforcement of executive branch regulations depended on vague, subjective judgments at the agency level and, to a substantial extent, on self-policing by individual government employees with a financial stake in non-enforcement. To be sure, Congress could have rejected the conclusions of the Commissions and instead adopted a more limited statute. It did not, however, and this judgment as to the need for strong medicine is entitled to significant deference. *See Federal Election Commission v. National Right to Work Committee*, 459 U.S. 197, 210 (1982) ("Nor will we second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared.").

Indeed, this Court has repeatedly upheld far-reaching statutory restrictions designed to promote the integrity and efficiency of the public service. *Mitchell*, 330 U.S. at 101 & n.37; *CSC*, 413 U.S. at 566 n.12. The existence of numerous state and local government regulations that limit "moonlighting" by government employees suggests

[20] *Ethics Commission Report* at 36.

strongly that lesser restrictions such as the prohibition against honoraria do not rise to the constitutional level that Respondents in this case have claimed. *See, e.g., Gosney v. Sonora Independent School District*, 603 F.2d 522, 527-8 (5th Cir. 1979) (uniform prohibition on outside employment); *Hayes v. Civil Service Commission*, 108 N.E.2d 505 (Ill. 1952) (ban on all outside employment by government employee).

Third, the Court of Appeals failed to recognize that the reasonableness of this legislative judgment has been borne out in a number of important ways since passage of the honoraria ban. For instance, the report of the General Accounting Office ("GAO Report") catalogues the difficulty that federal agencies have encountered in enforcing the subjective and varied ethics regulations in effect prior to the enactment of the honoraria ban. The report, entitled *Employee Conduct Standards: Some Outside Activities Present Conflict-of-Interest Issues*, presents the results of a GAO study of federal employees' work-related activities outside the scope of their employment, and the possible conflicts of interest that may result from those activities.[21]

The study specifically addresses the adequacy of agency controls over federal employees' outside activities, including controls on speaking and writing prior to the effective date of the honoraria ban. Based on its investigation of eleven selected agencies, the GAO found that speaking and consulting were the most frequently approved outside activities. In direct contradiction to Respondents' repeated assertions that existing conflict of interest regulations were adequate, the GAO Report concludes the "[s]ome agencies did not monitor employees' activities outside of the government to the extent needed to ensure that violations of related laws and regulations were avoided." GAO Report at 3a. Indeed, the GAO Report notes that "[b]ecause of overly permissive approval policies, five agencies approved some outside activities, such as speaking and consulting, that appeared to violate the standard of conduct prohibiting the use of public office for private gain. These activities preceded the January 1991 ban by Congress on the acceptance of honoraria (compensation) by most federal employees for outside speeches, articles, and appearances." GAO Report at 3a.

[21] U.S. General Accounting Office, Report to the Chair, Subcommittee on Federal Services, Post Office and Civil Service Committee on Governmental Affairs, U.S. Senate, *Employee Conduct Standards: Some Outside Activities Present Conflict-of-Interest Issues* (released to Congress in February 1992; released to public on March 30, 1992) (attached as Appendix A, without appendices).

Moreover, the GAO Report points to the uneven nature of enforcement of existing conflict-of-interest regulations. "Standard-of-conduct regulations and procedures for monitoring employees' outside activities varied widely among the 11 agencies. Some agencies did not monitor employees' activities outside the government to an extent adequate to ensure that violations of related laws and regulations were avoided." GAO Report at 9a.[22]

The uneven enforcement of the executive branch regulations identified in the GAO Report engendered a system of perceived and actual unfairness and abuses that seriously threatened the legitimacy of government

[22] In addition, GAO made the following specific findings:

> Most agencies did not periodically update their approvals of employees' outside activities that were to continue over several years even though employees duties could change over this time to create a conflict of interest. GAO Report at 10a.
>
> Some agencies did not require by regulation that employees provide some information that [GAO] believe[s] was necessary for determining whether conflict-of-interest and standard-of conduct requirements were met. GAO Report at 11a.
>
> [S]ix agencies did not require employees to show the amount of compensation they expected to receive from outside activities . . . [Thus], the agencies could not determine whether [the] employees [complied with the $2000 limit] on compensation from outside activities. GAO Report at 11a.

conflict-of-interest regulations. Against this backdrop of uneven enforcement, Congress' judgment that a broad prophylactic ban was necessary to curb the actual and potential abuses of honoraria is reasonable.

In addition, the activities of the Respondents themselves (many of whom have important discretionary functions despite their self-description as low-level employees) raise substantial questions about the enforcement of subjective regulations. For instance, the agricultural editor for the Voice of America complains that the honoraria ban unfairly prohibited him from speaking for payment before a gathering of representatives of agricultural groups at a conference in Rome. The fact that these agricultural groups have a substantial interest in the contents of his VOA reports apparently did not raise questions of conflict of interest either for him or for his agency. Similarly, the business editor at the VOA, also a party to this litigation, has written articles on a free-lance basis for organizations such as American Express and the U.S. Chamber of Commerce, despite the fact that these organizations have a decided interest in the manner in which economic and business news is reported. The judgment of Congress and the Commissions that subjective regulations and self-policing by those with interest in nonenforcement are inadequate is clearly borne out on the facts of this case.

CONCLUSION

It may well be that Congress could have drafted a more narrowly tailored law, one that distinguished among the three branches, among different levels of government employees, and among different types of activity for which honoraria are paid. But Congress had the right to conclude, as it did, that such distinctions would have been difficult to enforce, and would have left room for evasions that would create the reality or appearance of favoritism. The Constitution does not forbid the Congress from deciding in favor of a blanket and uniform ban. For the reasons stated above, the Court should grant the writ of certiorari.

Respectfully submitted,

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March 24, 1994

APPENDICES

APPENDIX A

United States General Accounting Office

GAO

Report to the Chairman, Subcommittee on Federal Services, Post Office and Civil Service, Committee on Governmental Affairs, U.S. Senate

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February 1992

EMPLOYEE CONDUCT STANDARDS

Some Outside Activities Present Conflict-of-Interest Issues

[SEAL]

GAO United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-245739

February 10, 1992

The Honorable David Pryor
Chairman, Subcommittee on Federal
Services, Post Office and Civil Service
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

Your April 30, 1990, letter raised questions about federal employees' work-related activities outside the government. You were troubled that conflicts of interest may result when federal employees do similar work both inside and outside government. In response to your questions and concerns, this report presents information we obtained at selected agencies [1] on

- the extent and characteristics of employees' approved activities outside the federal government,

[1] As agreed with the Subcommittee, we included the following 11 agencies in our review: the National Institute of Science and Technology (NIST); the Small Business Administration (SBA); the Office of U.S. Trade Representative (USTR); the Merit Systems Protection Board (MSPB); the Office of Personnel Management (OPM); the Nuclear Regulatory Commission (NRC); the Securities and Exchange Commission (SEC); the Environmental Protection Agency (EPA); the Food and Drug Administration (FDA); the Centers for Disease Control (CDC); and the National Institutes of Health (NIH).

- agency regulations and procedures for monitoring these outside activities, and
- approved activities that could create the appearance of conflict of interest.

As agreed with the Subcommittee, we also determined whether the Office of Government Ethics (OGE) had (1) provided guidance to agencies on approving and monitoring employees' outside activities and (2) reviewed agency controls over such activities.

Results in Brief

The extent of approved outside activities varied among the 11 agencies. Speaking and consulting were the most frequently approved outside activities.

Some agencies did not monitor employees' activities outside of the government to the extent needed to ensure that violations of related laws and regulations were avoided. For example, most agencies did not require employees to update their approvals, even though in some instances the outside activities were to occur over several years. OGE audited most of the 11 agencies' controls over outside activities and recommended improvements. However, agencies did not always implement OGE's recommendations. Subsequently, OGE took steps to improve agency compliance with OGE recommendations.

Because of overly permissive approval policies, five agencies approved some outside activities, such as speaking and consulting, that appeared to violate the standard of conduct prohibiting the use of public office for private gain. These activities preceded the January 1991 ban by Congress on the acceptance of honoraria (compensation) by most federal employees for outside speeches, articles, and appearances. The ban applies whether or not the activity relates to government work. Congress is considering pro-

posals to apply the ban only to the above activities when they focus specifically on government work. Such a change would allow employees to again receive honoraria under some conditions now prohibited. It would also continue the prohibition on accepting compensation for certain outside activities that we question because of their close relationship to agency responsibilities.

In July 1991, OGE proposed new standards of conduct for all executive branch employees. OGE's proposed standards allow agencies to establish, when desirable, requirements for prior approval of employees' outside activities. We believe OGE needs to strengthen its standards on agency approval of outside activities. Prior review of certain kinds of outside activities, e.g., those related to the agency's responsibilities, can help agencies and employees avoid conflicts of interest. In addition, OGE needs to provide agencies with guidance on dealing with situations in which employees are to receive compensation for consulting activities that are closely related to agency responsibilities. OGE agreed to implement all of our recommendations.

Background

Since 1965, executive orders and implementing regulations have prohibited employees from engaging in outside activities that are not compatible with the full and proper discharge of the duties and responsibilities of their government employment. The prohibition includes activities that involve the acceptance of a fee or anything of value in circumstances in which acceptance may result in or create the appearance of a conflict of interest or that may result in the appearance of using public office for private gain. Further, officers and employees may not use information gained by virtue of their government employment that is not generally available to the

public, nor can they use government time, equipment, or facilities to carry out private activities.

Executive branch standard-of-conduct regulations issued in 1968 and administered by OGE contain specific guidance and requirements on employees' outside activities. Under those regulations, executive branch agencies were required to issue standard-of-conduct regulations applicable to the agency's particular functions and activities. Additionally, OGE issued advisory guidance on approving employees' outside activities, such as making paid speeches at privately sponsored seminars.

In April 1989, President Bush issued Executive Order 12674, which includes the principles of ethical conduct of government officers and employees. These principles supersede those on which the 1968 regulations were based. As authorized by that order, in July 1991, OGE published proposed employee conduct regulations that included new guidance on employees' outside activities.

An honoraria ban effective January 1, 1991, mandated by the Ethics Reform Act of 1989, prohibits most federal employees from accepting money or anything of value for a speech, article, or appearance, whether or not these activities relate to government work. Bills have been introduced in Congress to modify the honoraria ban to limit its application to activities that focus specifically on the employing agency's responsibilities, policies, or programs.

Until January 1, 1991, and for the period covered by our review, the test for acceptance of honoraria by employees except for highest level officials, who were subject to additional restrictions, included the following five questions.

1. Is the honorarium offered for carrying out government duties or for an activity that focuses specifi-

cally on the employing agency's responsibilities, policies, and programs?

2. Is the honorarium offered because of the official position held by the employee?

3. Is the honorarium offered because of the government information that is being imparted?

4. Is the honorarium offered by someone who does business with or wishes to do business with the employee in his or her official capacity?

5. Were any government resources or time used by the employee to produce the materials for the articles or speech or make the appearance?

If the answer to all of these questions was no, then an offered honorarium was acceptable, although under 2 U.S.C. 441i(a) it could not have exceeded $2,000. (See app. II for additional information on prohibitions and requirements on employees' activities outside the federal government.)

Approach

Our approach to reviewing employees' outside activities at all 11 agencies was to obtain data on employees who had been approved for outside activities at any time during fiscal years 1988 through 1990. For a universe of these employees at some agencies and a sample of employees at other agencies, we collected information on the employee (e.g., federal occupation and grade level), the type of approved outside activity (e.g., teaching, selling, consulting), and whether the employee was to be compensated. We compared approved outside activities with criteria in applicable laws, executive orders, regulations, and OGE guidance to see if the activities might create the appearance of a violation of standard-of-conduct regulations and/or conflict-of-interest statutes.

To determine how the 11 agencies monitored outside activities, we compared their regulations and practices with related federal statutes and government-wide regulations. We reviewed their procedures and criteria for approving employees' requests to do outside activities. We also reviewed the results of Office of Inspector General's investigations done at 7 of the 11 agencies on employees' outside activities.

We assessed OGE's guidance and oversight of outside employment by reviewing its regulations, guidance, and audit reports and determining the extent to which OGE addressed outside employment in these documents. Appendix I provides additional information on the objectives, scope, and methodology of our review, including details on our sampling procedures.

Extent and Characteristics of Employees' Approved Outside Activities

As seen in table 1, the data we gathered showed that the number of employees who were approved for outside activities ranged from less than 1 percent, for OPM headquarters employees, up to 11 percent, for FDA employees.

Table 1: Employees With Approved Outside Activities

With Agency	Total employees as of October 1990	Employees with approved activities [a] Number	Percent
NIST	3,061	105	3
SBA [b]	3,931	143	4
USTR	154	1	1
MSPB	307	5	2
OPM [c]	3,680	3	[d]
NRC	3,130	24	1
SEC	2,271	38	2
EPA-OPTS [e]	1,308	44	3
FDA	8,614	988	11
CDC	5,462	301	6
NIH	16,181	826	5

[a] Data for all agencies, except NIH, are approvals during fiscal years 1988 through 1990 for NIH, we, limited our review primarily to fiscal year 1990 approvals.

[b] SBA approval data excluded certain types of outside activities such as "routine" or "noncontroversial" requests from employees at grade 12 and below that were approved by SBA regional offices.

[c] All OPM data are for headquarters employees only. Our review at OPM did not disclose any approvals of outside activities for OPM employees. Subsequently, OPM identified three employees who were to engage in outside activities.

[d] Less than 1 percent.

[e] Because overall EPA approval data were not available, we limited our review primarily to EPA's Office of Pesticides and Toxic Substances (OPTS).

As indicated in table 1, NIH, FDA, and CDC approved the largest number of outside activities. However, differences in the percentages of employees with approved activities in the 11 agencies may be due, in part, to varying approval requirements.

Employees approved for outside activities came from a variety of federal occupations. Some occupations were more predominant than others. For example,

medical officers accounted for 32 percent and 41 percent of all approved outside activities at CDC and NIH, respectively. Most of the employees receiving approval for outside activities were at grades 13 and above. Outside speaking and consulting were common among most of the 11 agencies and accounted for the vast majority of the activities, approved by 5 agencies—NIH, CDC, FDA, NIST, and FDA. Most of the employees at each agency (from about 60 to 100 percent) either were to be paid for their outside activities or were to do activities for which they customarily would be paid, such as working as a retail sales clerk.

Agency Procedures for Monitoring Outside Activities Varied Widely

Standard-of-conduct regulations and procedures for monitoring employees' outside activities varied widely among the 11 agencies. Some agencies did not monitor employees' activities outside the government to an extent adequate to ensure that violations of related laws and regulations were avoided.

All 11 agencies prohibited employees from doing certain work-related activities outside the agencies. However, the prohibitions varied in scope and specificity. For example, SEC prohibited employees from holding any outside job associated with the financial securities markets. In contrast, NRC did not prohibit outright any specific nuclear industry-related outside activities. Rather, along with some general prohibitions, NRC identified certain activities that it said could be incompatible with government employment. This included accepting employment or anything of value from cetrain NRC-related organizations, such as contractors, licensees, and applicants for NRC licenses. NRC employees were not

to engage in these types of activities unless receiving NRC authorization.

All 11 agencies also required employees to obtain approval of some types of outside activities. Employees' immediate supervisors at all agencies had a role in reviewing outside activities. These supervisors were to either provide information to approving officials (at 1 agency) or recommend approval or disapproval to approving officials (at 10 agencies).

Beyond these basic approval requirements, we found little consistency in the restrictions on employees' outside activities or agency approval requirements. Four agencies (SBA, USTR, SEC, and FDA) required all employees to obtain approval of work-related outside activities. The other seven agencies had less comprehensive approval requirements. For example, MSPB allowed its employees to determine when approval of their outside activities should be obtained. NIS limited its requirements to teaching, lecturing, writing, counseling, and other outside technical and professional activities. In addition, under Commerce regulations, NIST employees were required to obtain departmental authorization for employment with foreign entities.

Most agencies did not periodically update their approvals of employees' outside activities that were to continue over several years even though employees' duties with the federal agency or the outside organization, or both, could change over this time to create conflicts of interest or other ethics problems. Annual financial disclosure reports provided information on employees' outside activities, but not all agencies used these reports to monitor the approval of such activities. Specifically, ethics officials in two agencies (SEC and USTR) said they did not use the reports to determine if supervisory approval was obtained when required.

Some agencies did not require by regulation that employees provide some information that we believe was necessary for determining whether conflict-of-interest and standard-of-conduct requirements were met. Agency officials may have at times requested employees to supply additional information. However, on the basis of our review, we found that some information essential for informed decisions was not obtained.

For example, six agencies (NIST, USTR, OPM, NRC, FDA, and CDC) did not require employees to show the amount of compensation they expected to receive from outside activities. Three agencies (NIST, USTR, and OPM) did not require employees to identify the names of outside employers. By not requiring this information, the agencies could not determine whether (1) employees met legal and regulatory restrictions on compensation from outside activities (e.g., the $2,000 honorarium limit in 2 U.S.C. 441i(a) that applied before the ban) and (2) outside employers had financial relationships that could create a conflict of interest.

Some Outside Activities Presented Conflict-of-Interest Issues

Nine of the 11 agencies approved outside activities that presented issues involving potential violations of conflict-of-interest statutes and/or standard-of-conduct regulations.[2] These issues usually surfaced when employees requested approval of activities related to the agencies' responsibilities and, in some cases, the employees' federal duties.

When employees' requests presented potentially problematic situations, agencies sometimes imposed con-

[2] Insufficient data were available for us to determine whether OPM- and USTR-approved requests, four in total, presented potential conflict-of-interest or standard-of-conduct issues.

ditions on the employees before approving their requests. Four agencies effectively dealt with potential problems in this manner. The agencies' conditional approvals put the employees on notice as to their obligations and, in our view, minimized the risk of possible violations of the conflict-of-interest statutes and standard-of-conduct regulations.

Employees in five other agencies received approval of some outside activities, primarily speaking and consulting, that could not be appropriately handled with conditional approvals. Table 2 shows the extent to which these five agencies approved outside speaking and consulting activities.

Table 2: Speaking and Consulting Approved by Five Agencies

Agency	Total employees with approvals	Speaking [a]		Consulting	
		Number	Percent	Number	Percent
NIH	826	446	54	135	14
FDA	988	30	3	71	7
CDC	301	58	16	29	10
NIST	105	10	4	16	15
EPA-OPTS	44	1	0	12	27

[a] Consists primarily of speaking but also includes some articles and appearance. Employees doing these activities, as well as consulting, are counted in both the speaking and consulting columns.

In most cases, employees approved for the above activities indicated in their requests that they would be paid. Although employees did not always show the amounts of compensation, available data show that the amounts were usually less than $1,000 for each activity. However, for some employees, the cumulative amounts exceeded that amount. For example, 19 NIH employees reported that they were to receive compensation totaling from $8,000 to about $23,000 for outside speeches during fiscal year 1990.

Some of these outside activities were to focus specifically on the agencies' responsibilities and, in some cases, the employees' official duties. When federal employees are paid for outside activities closely related to the agencies' responsibilities, the situation may result in, or create the appearance of, using public office for private gain and thus may violate federal standard-of-conduct regulations. Whether an actual violation ocurs depends on how closely the outside activity relates to the agencies' responsibilities.

In 1985, OGE issued guidance on acceptance of compensation in situations involving employees' participation in seminars, conferences, and briefings. OGE advised that compensation was inappropriate when, for instance, an outside activity depends on the use of nonpublic information [3] or focuses specifically on the agency's responsibilities, policies, and programs.

On the basis of the information we had available, we believe that NIH, FDA, CDC, NIST, and EPA approved some speaking and consulting activities that were contrary to federal standard-of-conduct regulations and OGE's 1985 guidance. These agencies approved activities that appeared to focus specifically on the agencies' responsibilities and/or the employees' federal duties. For example, NIH approved a request from the branch chief responsible for clinical hematology to receive $2,000 for a speech on

[3] OGE referred in its 1985 opinion to provisions of the 1968 standard-of-conduct regulation (5 C.F.R. 735) on misuse of information. The regulation prohibits an employee from directly or indirectly using, or allowing the use of, official information obtained in connection with an employee's government duties that has not been made available to the general public.

gene transfer. The employee's position description and information in the request indicated that the speech focused specifically on NIH's responsibilities and on the employee's official duties relating to hematology.

In another case, CDC approved a request from the chief of a surveillance activity to give a speech on "Nosocomial Pneumonia" for compensation (amount not given in the request) at an infectious disease seminar. The employee's position description showed he was in the hospital infections program of the Center for infectious Diseases and that his duties included national surveillance and epidemiological studies of nonsocomial infections.

We believe that some agencies approved activities that were questionable as to the appropriateness of accepting compensation because of the agencies' overly permissive policies and practices regarding such activities. For example, NIH officials explained that medical doctors and other employees in highly specialized fields of expertise came to work with NIH believing that they could share their knowledge with others in the profession who have similar interests and responsibilities.

NIH officials also said that designating the requested activities as official duties of the employees could have a significant impact on NIH's budget; NIH's budget is not affected when outside organizations cover the costs for NIH employees' outside activities, such as making speeches and presenting papers. However, under recently granted authority, NIH and other agencies can avoid this budgetary impact. As a result of the Ethics Reform Act of 1989 and interim GSA regulations issued in March 1991, agencies now have authority to accept payments for travel, subsistence, and related expenses from non-

federal sources when employees attend meetings and similar functions relating to their official duties.

Regulations and guidance issued by the Department of Health and Human Services (HHS) and three of its component agencies did not include some restrictions that OGE recommended in its 1985 guidance. Although the OGE memorandum was not binding on the agencies, we believe that it provided useful criteria for distinguishing between official duties and outside activities. Similar criteria were later included both in standard-of-conduct regulations proposed by OGE and bills introduced in Congress on acceptance of honoraria discussed later in this report.

At NIST and EPA, some employees were approved to do outside consulting activities relating to the agencies' responsibilities and involving the use of information generated as a result of the employees' federal duties, as the following examples illustrate.

- EPA approved a request of an EPA chemist to assist a foundation with restructuring its quality assurance program to be consistent with that of EPA's contract laboratory program. The employee was to receive $60 an hour for up to 120 hours of service over a 12-month period. According to EPA records, the employee worked in an EPA branch responsible for the contractor laboratory program, and the employee's duties included developing environmental-related standards and criteria as part of that program.
- NIST approved a physicist's request to consult for compensation (amount undisclosed) with a private company in developing "a polarized electron source as a commercial product." The employee's official duties included research on spin-polarized electrons, which were to be used in the commercial product. The employee said that (1) the

work depended on information obtained as an agency employee; (2) the work involved a source developed in his official capacity; and (3) the outside employer supplied the employee's division at NIST with equipment, such as electron spin polarization analyzers. A Department of Commerce attorney advised NIST that the consulting could be inappropriate. NIST's records did not show whether or how the attorney's concerns were resolved. In November 1991, after we questioned this approval, the employee advised NIST that a consulting agreement never materialized.

Statutory Proposals Would Continue Honoraria Ban on Certain Government-Related Activities

All of the government-related outside activities previously discussed were approved before January 1991. Congress banned the acceptance of compensation for certain outside activities, effective January 1, 1991. Under the ban, most federal employees are prohibited from accepting money or anything of value for a speech, article, or appearance, whether or not these activities relate to government work.

Due to the broad scope of the ban, Congress began, in January 1991, considering proposals to allow federal employees to receive honoraria under certain circumstances. House and Senate bills include criteria prohibiting the acceptance of compensation for appearances, speeches, and articles that relate primarily to or focus specifically on an agency's responsibilities, policies, or programs. These bills address the acceptance of compensation for some of the activities previously discussed that appear to have been contrary to standard-of-conduct regulations and OGE guidance.

OGE Has Proposed New Standards and Guidance for Agencies

In July 1991, OGE proposed regulations on uniform standards of ethical conduct for executive branch employees. These regulations update standards first established more than 25 years ago. OGE's proposed standards include provisions dealing specifically with outside activities but, in our view, can be strengthened regarding (1) prior agency approval of outside activities and (2) consulting by employees on subjects related to the agency's responsibilities.

Standard on Approval of Outside Activities Can Be Strengthened

The OGE-proposed regulations on employees' outside activities consist largely of references to prohibitions and limitations on employees' outside activities, including the compensation they may receive for such activities. The standards permit agencies to issue supplemental regulations to require employees to obtain approval before engaging in outside activities, when it is desirable for administering the agency's ethics program.

In our view, OGE's standards need to better recognize the value of prior review and approval of employees' outside activities. Our work at the 11 agencies showed that, along with appropriate agency approval criteria, the requirement for employees to obtain prior review of their agency-related outside activities is necessary to avoid violations of conflict-of-interest statutes and standards-of-conduct regulations. OGE's standards identify numerous restrictions on employees' outside activities. Without such prior review and approval, employees could inadequately consider these restrictions and subject themselves to criminal sanctions for violating conflict-of-interest statutes.

As part of the approval process, some agency officials took care to stipulate specific conditions that employees should observe in their outside activities to avoid problems. We also found in agencies that had established weak requirements for approval, employees were found to have violated standards of conduct. In these situations, violations might have been avoided with stronger approval requirements. For example, OPM had limited requirements for approval of outside activities. In addition, EPA's administration of its approval requirements was highly decentralized, and requirements were weakly enforced at one of the two EPA offices we visited. According to information furnished by their Offices of Inspector General, both agencies had investigated and disciplined employees regarding outside activities more often than any of the other nine agencies.

Agency-Related Outside Consulting Requires Guidance

OGE's proposed standards prohibit compensation for teaching, speaking, and writing when the subject matter focuses specifically on the employing agencies' responsibilities, programs, and operations. However, the standards do not specifically address consulting by federal employees when the subject matter of the consulting focuses specifically on the employing agencies' responsibilities, programs, and operations. Our work showed that employees at some agencies did outside consulting for compensation that was closely related to the employing agencies' responsibilities, program, and operations and, in some instances, the employees' official duties. Employees engaged in these consulting activities could be viewed as using public office for private gain.

OGE Audits Usually Covered Agency Controls Over Employees' Outside Activities

Between January 1986 and December 1990, OGE reviewed 9 of the 11 agencies' ethics programs and specifically addressed outside activities in 17 of the 22 resulting audit reports. OGE did not mention outside activities in the remaining five reports. As a result of its audits, OGE made recommendations to address weaknesses that included inappropriate NIH and FDA criteria for approving outside activities related to the agencies' responsibilities. NIH revised its manual after receiving OGE's audit report, but when we did our work at FDA, it had not responded to OGE's recommendations. OGE was again reviewing NIH's approval criteria at the time of our review.

Other agencies also had not fully implemented OGE recommendations. For example, MSPB agreed with OGE to establish written policies on approval of outside activities but had not done so at the time of our review.

We earlier reported that OGE had repeatedly recommended to some agencies over several years to correct weaknesses that we found still existed in 1990.[4] OGE has taken steps since that time to improve agency acceptance and implementation of OGE recommendations, including, for example, sending audit reports to agency heads instead of ethics officials and being more aggressive on follow-up of open recommendations. OGE had not audited some agency ethics programs as frequently as it desired because of limited OGE staff. OGE increased the size of its audit staff from 2 auditors in 1989 to 12 as of September 1991. In addition to the above,

[4] *Office of Government Ethics' Oversight Role* (GAO/T-GGD-90-48, June 5, 1990).

OGE has since received additional enforcement authority to obtain corrective action when the Director of OGE determines such action is needed. Under its 1988 reauthorization act, OGE is authorized in some cases to order actions and, if necessary, notify the president and Congress in order to correct deficiencies in agency ethics programs.

Conclusions

The information we gathered indicated that some employees engaged in activities outside the federal government, such as speaking and consulting, that were focused specifically on the agencies' responsibilities and or related directly to the employees' duties. Generally, the employees were to be compensated for their outside speaking and consulting. We believe the risk that these situations may result in or create the appearance of a conflict of interest can be minimized if agencies apply appropriate criteria to distinguish between matters that are official duties and outside acivities. Criteria for these distinctions are included in OGE's proposed standard-of-conduct regulations and in bills being considered by Congress. However, the current criteria are not applied to consulting. OGE needs to provide agencies with guidance on consulting because this activity can also present conflict-of-interest issues when the consulting relates to an agency's responsibilities.

The risk of conflict-of-interest problems for federal employees can also be reduced if agencies require employees to request prior approval for activities that may pose such problems. Such risk is increased when employees engage in outside activities that are related to the agency's mission and operations. Evidence we gathered indicates that approval requirements, along with adequate prior agency review of such activities using appropriate criteria, periodic

updates of approvals, and monitoring of approvals as part of the financial disclosure process, can help avoid conflict problems.

Recommendations

To help avoid ethics problems relating to employees' outside activities, we recommend that the Director, OGE take the following steps:

- Ensure that HHS, Commerce, and EPA fully adopt and comply with applicable restrictions on employees' compensation for outside speeches, articles, and appearances that relate to federal responsibilities.
- Provide agencies with guidance and criteria on the acceptance of compensation for consulting activities that relate to agencies' responsibilities, programs, and operations.
- Revise the proposed OGE standard-of-conduct regulations to require that each agency establish, when appropriate and necessary on the basis of its particular mission and operations, adequate prior agency review of employees' outside activities and periodic update of approvals.

Agency Comments

In commenting on a draft of our report, the OGE Director summarized actions OGE will take to implement all three of our recommendations. (See app. VII.) The Director's written comments followed several discussions we had with OGE officials to clarify our recommendations and agree on actions that OGE would take to respond to our report.

Concerning our first recommendation, OGE said that following the completion of its review of the NIH ethics program, it made a number of recommendations in November 1991 to HHS and NIH addressing problems noted in our report. OGE recommended,

among other things, that HHS issue guidance to component agencies and employees correcting the HHS standard-of-conduct regulations to reflect the standards for outside speaking and writing activities contained in OGE's 1985 guidance. OGE agreed to include a review of agency-related outside activities in its next audits of Commerce and EPA employees to ensure that these agencies comply as well.

In response to our second recommendation, OGE believed that its standard-of-conduct regulations, when issued in final form, will appropriately address consulting activities. OGE said the proposed regulations provide authority for agencies to issue supplemental agency regulations that prohibit compensated outside employment by all or any category of agency employees. OGE agreed to stress in the proposed regulations that (1) the principle that employees are to avoid the appearance of conflicts of interest and (2) the prohibition against use of public office for private gain apply to all outside activities. OGE also agreed to determine on the basis of its future audit work whether more specific guidance on consulting should be provided on a governmentwide basis.

Regarding our third recommendation, i.e., agency approval of employees' outside activities, OGE agreed to strengthen its proposed standard-of-conduct regulations. OGE said the regulations will be revised to provide that an agency shall require prior approval of employees' outside employment and activities when it is determined to be necessary and desirable for the purpose of administering the agency's particular mission and operations.

In addition to OGE's comments, we received written comments on a draft of our report from seven other agencies (Commerce, SBA, USTR, MSPB, OPM, NRC, and HHS). Generally, the thrust of these agencies comments was to suggest changes to im-

prove the accuracy of the data presented in our report, and we have made these changes where appropriate. In its comments, HHS also recognized that its definition of job-relatedness of outside activities differed from ours. HHS said it would defer decisions on departmental changes until it has considered OGE's report on the matter (issued in November 1991) and until related reviews are completed by NIH and the HHS Office of General Counsel.

In addition, Commerce emphasized in its comments that employees are permitted use of their professional expertise in outside activities. We agree with Commerce in concept, but Commerce must also consider other relevant criteria, such as whether the activity focuses specifically on the agency's work. In this regard, our first recommendation to OGE addresses Commerce's (and other agencies') compliance with applicable requirements when approving outside activities. All of the written comments that we received, along with our evaluation of the comments, are included as appendixes to this report.

As agreed with the Subcommittee, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the date of this letter. At that time, we will send copies to the Director, OGE; the heads of the agencies directly responsible for the matters discussed in this report; and other interested parties.

The major contributors to this report are listed in appendix XV. Please contact me at (202) 275-5074 if you or your staff have any questions or need any assistance.

Sincerely yours,

/s/ Bernard L. Ungar
BERNARD L. UNGAR
Director, Federal Human Resource
Management Issues

APPENDIX B

[SEAL]

U.S. Department of Justice
Office of the Solicitor General

The Solicitor General *Washington, D.C. 20530*

February 1, 1994

Ken Stern, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

Re: *National Treasury Employees Union et al.* v. *United States, et al*—S. Ct. No. 93-1170

Dear Mr. Stern:

As requested in your letter of January 27, 1994, I hereby consent to the filing a brief amicus curiae on behalf of Common Cause.

Sincerely,

/s/ Drew S. Days, III
DREW S. DAYS, III
Solicitor General

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
P.O. BOX 7566
Washington, D.C. 20044-7566
(202) 662-6000

February 1, 1994

Kenneth P. Stern, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W
Washington, D.C. 20037-1420

Re: *National Treasury Employees Union, et al. v. United States of America, et al.*

Dear Mr. Stern:

By this letter, my clients consent to your filing, on behalf of Common Cause, an *amicus* brief in the above case.

Sincerely,

/s/ John Vanderstar

jld

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

[LOGO]

John N. Sturdivant
National President

Bobby L. Harnage
National Secretary-Treasurer

Joan C. Welsh
Director,
Women's Department

March 21, 1994

Rebecca Arbogast, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

Re: *United States of America et al., v. National Treasury Employees Union, et al.*, No. 93-1170

Dear Ms. Arbogast:

The American Federation of Government Employees, AFL-CIO, hereby consents to your filing an amicus curiae brief in the above-captioned matter before the Supreme Court on behalf of Common Cause.

Sincerely,

/s/ Mark D. Roth
MARK D. ROTH
General Counsel

[NTEU LOGO]

The National Treasury Employees Union

March 21, 1994

Kenneth Stern
Wilmer, Cutler, and Pickering
2445 M Street, N.W.
Washington, D.C. 20037

Re: United States v. NTEU, et al., No. 93-1170 (Sup Ct.)

Dear Mr. Stern:

This confirms that the National Treasury Employees Union, *et al.*, respondents, consent to the filing of an amicus brief in support of the petitioners by Common Cause.

Sincerely,

/s/ Gregory O'Duden
GREGORY O'DUDEN
Counsel of Record